



PUBLIC NOTICE

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**WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND
TECHNOLOGY EXEMPT CERTAIN EX PARTE PRESENTATIONS IN
GN DOCKET NO. 13-185**

August 15, 2013

On July 23, 2013 the Commission adopted a *Notice of Proposed Rulemaking (AWS-3 NPRM)* proposing allocation, service, licensing, and technical rules for a number of spectrum bands, collectively referred to as AWS-3.¹ The *AWS-3 NPRM* implements the Congressional directive in the Middle Class Tax Relief and Job Creation Act of 2012 to auction and license certain spectrum bands by February 2015. This *Public Notice* clarifies the *ex parte* status of certain presentations in this proceeding.

The *AWS-3 NPRM* proposes or seeks comment on recommendations that the Commerce Spectrum Management Advisory Committee (CSMAC) made to the National Telecommunications and Information Administration (NTIA), and that NTIA endorsed and recommended to the FCC regarding commercial wireless use of 1695-1710 MHz.² The Commission states in the *AWS-3 NPRM* that the record will be informed by future CSMAC reports on the 1755-1780/1850 MHz band and that, if NTIA endorses these recommendations, they will be added to record.³

CSMAC is an advisory committee created for the purpose of advising NTIA on spectrum policy issues. CSMAC consists of private-sector “Special Government Employees” appointed by NTIA to provide advice and recommendations on U.S. spectrum management policy.⁴ Commission staff has been present at meetings of the full CSMAC and participates in CSMAC’s five working groups. Commission staff’s participation in these meetings, and the free flow of information during the meetings, is essential to gaining an understanding of the issues implicated in making 1695-1710 MHz and 1755-1780 MHz available for commercial wireless use.

¹ See Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Applications for License and Authority to Operate in the 2155-2175 MHz Band; Petitions for Forbearance Under 47 U.S.C. § 160; GN Docket No. 13-185, WT Docket No. 07-195 (Proceeding Terminated), WT Docket No. 04-356 (Proceeding Terminated), WT Docket No. 07-16 (Proceeding Terminated), WT Docket No. 07-30 (Proceeding Terminated); FCC 13-102, *Notice of Proposed Rulemaking and Order on Reconsideration*, __ FCC Rcd __ (rel. July 23, 2013) (*AWS-3 NPRM*).

² See, e.g., *id.* at ¶ 58-59.

³ See *id.* at ¶ 2.

⁴ See U.S. Department of Commerce, Charter of the Commerce Spectrum Management Advisory Committee (2013), http://www.ntia.doc.gov/files/ntia/publications/csmac_2013_charter.pdf.

While the CSMAC's meetings are open to the public, the FCC's *ex parte* requirements could, depending on the particular factual circumstances, be triggered if FCC decision makers are present, and oral or written presentations are made.⁵ Similarly, meetings of the CSMAC's five working groups could, depending on the particular factual circumstances, be subject to the Commission's *ex parte* rules when FCC decision makers are present, if oral or written *ex parte* presentations are made. Pursuant to our authority under Section 1.1200 of the Commission's rules, we establish a limited exemption in the AWS-3 proceeding (GN Docket No. 13-185) from the *ex parte* disclosure requirements of Section 1.1206 presentations made in formally organized meetings of the CSMAC at which FCC staff is present, and meetings held in connection with CSMAC, including working groups in which FCC staff is a participant.⁶ Such presentations will be exempt to the same extent as presentations are exempt under the shared jurisdiction exemption of Section 1.1204(a)(5).⁷ We note that this exemption does not change the nature of public CSMAC proceedings; it simply allows FCC staff to participate without triggering disclosure requirements under the Commission's *ex parte* rules.

The *AWS-3 NPRM* also seeks comment on issues regarding relocating federal users in 1695-1710 MHz and 1755-1780 MHz, spectrum sharing between commercial and federal users in 1695-1710 MHz and 1755-1780 MHz, and implementation matters related to the Spectrum Relocation Fund and the Public Safety Trust Fund. Discussions regarding these matters, not open to the public, occur between or among several agencies or branches of the Federal Government. Commission staff is regularly engaged with staff from NTIA, the Department of Defense (DoD), the Office of Management and Budget (OMB), the Office of Science and Technology Policy (OSTP), the Department of Justice (DoJ), the National Oceanic and Atmospheric Administration (NOAA), and other federal agencies and offices for the purpose of coordinating these matters, including but not limited to facilitating commercial use of the 1695-1710 MHz and 1755-1780 MHz bands. In addition, relevant Congressional committees have sought to further facilitate discussion among Federal Government stakeholders. Some of these discussions may already be subject to the Section 1.1204(a)(5) *ex parte* exemption in the Commission's rules, to the extent that they involve a matter over which that agency or branch and the Commission share jurisdiction, while others may not.⁸

We believe that these discussions among Federal Government personnel will benefit from an uninhibited flow of information between and among all participants, including potentially sensitive information regarding strategic federal use of these bands. Therefore, pursuant to our authority under Section 1.1200 of the Commission's rules, we exempt from the *ex parte* disclosure requirements of Section 1.1206 presentations regarding the AWS-3 proceeding (GN Docket No. 13-185) made between representatives from the FCC and NTIA, OMB, OSTP, DoD, DoJ, NOAA, other federal offices and agencies, or Congressional committee members and committee staff, to the same extent as presentations are exempt under the shared jurisdiction exemption of Section 1.1204(a)(5).⁹

To the extent that any of the participants in the above-described meetings intends the Commission, with respect to any decision it makes in the AWS-3 proceeding, to rely on an *ex parte* presentation to which we have extended an exemption herein, we encourage that party to file the presentation (or, if oral, summary of it) in the record with

⁵ 47 C.F.R. § 1.1206.

⁶ 47 C.F.R. §§ 1.1200, 1.1206.

⁷ *See id.* § 1.1204(a)(5). Specifically, the *ex parte* requirements do not apply provided that "any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will, if not otherwise submitted for the record, be disclosed by the Commission no later than at the time of the release of the Commission's decision." *Id.*

⁸ *See id.*

⁹ *See id.*; *supra* note 7.

ample time for other interested parties to the proceeding to review and respond, as appropriate, and for Commission staff to fully analyze and incorporate as necessary into any subsequent Commission decision. In this regard, we advise these participants that, consistent with the limitations of the exemption that we have established herein for the AWS-3 proceeding,¹⁰ in rendering a decision in this proceeding the Commission will not rely on an *ex parte* presentation covered by this exemption unless it is added to the record, at the latest, prior to the release of the decision.

Except as discussed herein, the above-captioned proceeding remains a permit-but-disclose proceeding in accordance with the Commission's rules under Section 1.1200.¹¹

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¹⁰ See *supra* notes 7-9 and accompanying text.

¹¹ See 47 U.S.C. § 1.1200 *et seq.*; *AWS-3 NPRM* ¶ 188.